

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-38

February 15, 2000

BELL ATLANTIC - MAINE  
Request for Approval of  
Interconnection Agreement with  
Conversent Communications, LLC

ORDER APPROVING  
INTERCONNECTION  
AGREEMENT

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, we approve an interconnection agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic - Maine (Bell Atlantic) (f/k/a NYNEX) and Conversent Communications, LLC (Conversent), pursuant to section 252 of the Telecommunications Act of 1996.

On January 18, 2000, Bell Atlantic filed a negotiated interconnection agreement with Conversent, pursuant to 47 U.S.C. § 252, enacted by the Telecommunications Act of 1996.

The agreement states that Conversent was formerly known as New England Voice and Data, LLC (NEVD). The Commission previously approved an interconnection agreement between NEVD and Bell Atlantic in Docket No. 98-843 on November 24, 1998 (the NEVD agreement). The NEVD agreement incorporates terms and conditions of an earlier interconnection agreement between New England Telephone and Telegraph Company d/b/a NYNEX and New England Fiber Communications, L.L.C., approved by the Commission in tDocket No. 97-502 on August 26, 1997. The agreement filed in this docket proposes to amend the NEVD agreement.

Interconnection agreements provide for interconnection between an incumbent local exchange carrier (ILEC) and another telecommunications carrier, including a competitive local exchange carrier (CLEC). An interconnection agreement may allow a telecommunications carrier to purchase unbundled network elements, or local services at a discounted wholesale rate (the discount reflecting avoided cost), or both, from an ILEC (or CLEC).

The agreement amends the NEVD agreement to enable the provision of unbundled dark fiber by Bell Atlantic to Conversent in Maine, pursuant to an agreement between Conversent and Bell Atlantic-Massachusetts dated October 21, 1998, at prices as approved by the Massachusetts Department of Telecommunications and Energy.

Conversent will pay to Bell Atlantic the interconnection prices contained in the voluntary agreement that was reached pursuant to arms-length negotiations between the

parties. The pricing standards contained in 47 U.S.C. § 252(d) apply only to arbitration proceedings under section 252(b) and not to negotiated agreements under section 252(a). Bell Atlantic does not represent that the prices contained in the Agreement are consistent with the section 252(d) pricing standards or with any other state or federal policy.

Section 252(e)(2) states that a state commission may reject a negotiated agreement only if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or if "the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity." We received no comments by the comment deadline set in a January 26, 2000 Notice of Agreement and Opportunity to Comment. We do not make either of the findings set for in section 252(e)(2) for rejection, and we therefore approve the agreement.

We qualify our approval in two respects, however, and reserve findings on future potential issues. First, we reserve judgment on whether the rates contained in the agreement are reasonable from the perspective of Bell Atlantic's retail ratepayers. Bell Atlantic is presently under an alternative form of regulation (AFOR) ordered by the Commission in Docket No. 94-123. The AFOR began in December, 1995. Under the AFOR, Bell Atlantic bears the risk of lost revenues resulting from rates that are too low. However, at the end of the initial 5-year period of the AFOR, and in 2005 if the present AFOR is renewed, we may have occasion to review Bell Atlantic's earnings. We do not resolve whether Bell Atlantic is receiving reasonable compensation from any CLECs that may avail themselves of the rates provided to Conversent pursuant to 47 U.S.C. § 252(i) and, if they are not reasonable, whether we should impute revenues to Bell Atlantic.

Second, section 271(c) of the Act, 47 U.S.C. § 271(c), requires that the Bell Operating Companies (BOCs) meet certain requirements before they are allowed to provide interLATA service (the so-called "competitive checklist"). Under section 271(d)(3), the Federal Communications Commission (FCC) must determine whether the BOC has met the competitive checklist before granting the BOC authority to provide interLATA service within its region. Prior to making that determination, the FCC must consult with state commissions to verify the compliance of the BOC with the checklist. Our approval of this Agreement should not be construed as a finding that Bell Atlantic has met those requirements.

If Conversent wishes to provide public utility services, it must seek Commission authorization to provide those services pursuant to 35-A M.R.S.A. § 2102, and we will require Conversent to maintain schedules of rates, terms, and conditions pursuant to 35-A M.R.S.A. §§ 304. The terms and conditions shall specify the areas in which the utility will actually provide originating and terminating local exchange service, and may do so by reference to incumbent local exchange carrier exchanges rather than by municipalities.

The agreement filed by Bell Atlantic provides for interconnection between Conversent and Bell Atlantic's network in Maine. If Conversent seeks to interconnect with networks maintained by independent local exchange carriers in Maine, it must seek a termination, suspension, or modification of the exemption contained in 47 U.S.C. 251(f)(1)(A).

## **ORDERING PARAGRAPHS**

Accordingly, we

1. Approve the Interconnection Agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic - Maine (f/k/a NYNEX) and Conversent Communications, LLC; attached hereto, pursuant to 47 U.S.C. § 252(e); and
2. Order that the Administrative Director shall make a copy of the attached Agreement available for public inspection and copying pursuant to 47 C.F.R. § 252(h) within 10 days of the date of this Order.

Dated at Augusta, Maine this 15th day of February, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent  
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.